

VIRGINIA DEPARTMENT OF EDUCATION  
Division of Special Education and Student Services  
Office of Dispute Resolution & Administrative Services

**ANNUAL REPORT  
OF THE  
DISPUTE RESOLUTION SYSTEMS  
AND  
ADMINISTRATIVE SERVICES**

- Due Process Hearing System
- Mediation Services
- Complaints Resolution System
- Administrative Services

Reporting Period: July 1, 2004 – June 30, 2005

Reporting Date: August 1, 2005

This review serves to assist the Virginia Department of Education (VDOE) in:

- ensuring compliance with the federal and state mandates governing the dispute resolution systems;
- identifying future training activities, particularly for hearing officers and mediators;
- identifying and addressing systemic issues impacting local school divisions; and,
- assessing the strengths and challenges of each system.

This analysis serves as a reporting mechanism to VDOE's management team responsible for the development of VDOE's State Performance Plan to the U.S. Department of Education's Office of Special Education Programs and for other data collection reports. It also provides information on this office's systems to VDOE staff and consumer groups listed at the end of this report.

Questions regarding the content of this report may be directed to the Office of Dispute Resolution and Administrative Services at (804) 225-2013. Information regarding the office's services is available on the web at:

<http://www.doe.virginia.gov/VDOE/dueproc>

## PART I DUE PROCESS HEARING SYSTEM

- Baseline Data
- Hearing Officer Performance
  - ✓ Management of Hearings
  - ✓ Decisions
  - ✓ Managing the 45-Day Timeline
- Recertification of Hearing Officers
- Training of Hearing Officers
- Implementation Plans
- Follow-up System for Implementation Plans
- ODR/AS Initiatives

### A. BASELINE DATA

#### ☐ Number of Hearing Requests

	2004 – 2005	2003 – 2004	2002-2003
Number of requests	107	127	100
Number dismissed/withdrawn <sup>1</sup>	68	87	62
Number of decisions rendered after full hearing <sup>2</sup>	28	40	18
Number pending as of 6-30-05	11	0	20

#### ☐ Number of Hearing Requests – 5-Year Period

Year	2004-2005	2003-2004	2002-2003	2001-2002	2000-2001
Total Requests	107	127	100	120	130

<sup>1</sup> Cases closed without a hearing due to a mediation, or settlement agreement, or request for withdrawal.

<sup>2</sup> Redacted decisions are posted on the web: <http://www.doe.virginia.gov/VDOE/dueproc>

☐ **Number of Decisions**

	Reporting Periods		
	2004 – 2005	2003 – 2004*	2002 – 2003**
Number of Decisions	<b>28</b>	<b>34</b>	<b>18</b>
Initiating Party:			
Parent	26	29	17
LEA	2	5	1
Prevailing Party:			
Parent	2	6	1
LEA	25	25	14
Split	1	3	3

\*From the 2003-2004 Annual Report

\*\*From the 2002-2003 Annual Report

☐ **Additional Case Information**

During this reporting period, 12 cases, initiated in 2003-04, were closed.

Disposition of these 12 cases

Issues	Prevailing Party	
	LEA	Parent
<b>IEP: 5</b>		
✓ placement (3)	2	1
✓ services (2)	0	2
<b>Eligibility: 3</b>		
✓ classification (3)	3	0
<b>Others: 4</b>		
✓ ESY (1)	1	2
✓ discipline (1)	1	0

☐ **Issues and Disposition**

	<b>2004 – 2005</b>			
		<b>Prevailing Party</b>		
<b>Issues / Sub-issues</b>	<b># Issues</b>	<b>LEA</b>	<b>Parent</b>	<b>Split</b>
<b>Total case issues</b>	<b>63</b>			
<b>IEP</b>	<b>30</b>			
Placement	15	13	1	1
Services	6	6	0	0
Development	7	7	0	0
Compensatory services	1	1	0	0
Notice	1	1	0	0
<b>Due Process</b>	<b>5</b>			
Procedural violations	4	4	0	0
Settlement agreement	1	0	1	0
Appropriate stay put	0	0	0	0
Burden of proof	0	0	0	0
Statute of limitation	0	0	0	0
<b>Discipline</b>	<b>12</b>	<b>12</b>	<b>0</b>	<b>0</b>
<b>Eligibility</b>	<b>4</b>			
Classification	1	1	0	0
Evaluations	3	3	0	0
<b>Other</b>	<b>12</b>			
Child Find	0	0	0	0
ESY	4	2	2	0
Emotional distress	0	0	0	0
IEE	3	3	0	0
Violation of 504	3	3	0	0
Complaints	1	1	0	0
Age of Majority	1	0	1	0

Issue	2004 - 2005			2003 - 2004			2002 - 2003		
	Total	LEA	P	Total	LEA	P	Total	LEA	P
<b>IEP</b>	<b>30</b>	29	1	<b>33</b>	31	2	<b>31</b>	25	6
<b>Due Process</b>	<b>5</b>	4	1	<b>9</b>	5	4	<b>2</b>	2	0
<b>Discipline</b>	<b>12</b>	12	0	<b>7</b>	7	0	<b>2</b>	2	0
<b>Eligibility</b>	<b>4</b>	4	0	<b>8</b>	6	2	<b>4</b>	3	1
<b>Other</b>	<b>12</b>	9	3	<b>4</b>	3	1	<b>5</b>	4	1
Child Find	0	0	0	0	0	0	2	2	0
ESY	4	2	2	3	2	1	2	1	1
Emotional Distress	0	0	0	1	1	0	0	0	0
IEE	3	3	0	0	0	0	0	0	0
504	3	3	0	0	0	0	1	1	0
Complaints	1	1	0	0	0	0	0	0	0
Age of Majority	1	0	1	0	0	0	0	0	0
<b>Totals</b>	<b>63</b>	<b>58</b>	<b>5</b>	<b>61</b>	<b>52</b>	<b>9</b>	<b>44</b>	<b>36</b>	<b>8</b>

☐ **Number of Hearing Officers**

☐ **Number of School Divisions with hearing requests**

	Reporting Periods		
	2004 – 2005	2003 – 2004	2002 - 2003
Number of Hearing Officers	38	41	46
✓ assigned to hearings <sup>3</sup>	34	40	31
✓ assigned more than once	23	36	11
Number of school divisions involved in hearing requests	38 <sup>4</sup>	37 <sup>5</sup>	28

<sup>3</sup> Two of the hearing officers serve as Complaint Appeal Reviewers for the Complaint Appeal System. They are required to complete the same training requirements as the other hearing officers; however, while serving as a complaint appeal reviewer, they are not appointed to due process hearing cases.

<sup>4</sup>Four cases involved VDOE as a co-party.

<sup>5</sup>One case involved VDOE as a co-party.

## □ Trends

- Requests for due process hearings decreased by 20 requests over last year's reporting period. The requests represent approximately 10 less cases than the 5-year average. No factor can be identified as contributing to the decreased number of requests in comparison to last year.
- One (1) additional school division was involved in hearing requests during this reporting period. No particular school division or region experienced an influx of cases.
- The data from this current reporting period is consistent with the total year data for 2003-04, in identifying three repetitive themes:<sup>6</sup>
  - ✓ Parents are the most frequent initiating party.
  - ✓ LEAs are more often the prevailing party.
  - ✓ Issues focus primarily on: IEP placement and discipline.
- The number of hearing officers decreased by 3 persons this reporting period. This number represents a reduction of 89 hearing officers since the 2001-02 school year. The reduction in the number of hearing officers and their increased experience at the pre-hearing level are positive outcomes of the increased training requirements. Hearing officers are receiving more assignments. Since they hear matters more frequently, even if only at the pre-hearing level, they sharpen their skills, and utilize their training more frequently.

## **B. HEARING OFFICER PERFORMANCE – MANAGEMENT OF THE HEARING**

Evaluations are sent to both parties following the issuance of each decision, whether or not the case went to full hearing or was dismissed because of a mediation agreement, settlement agreement or request for withdrawal.

The director of the Office of Dispute Resolution and Administrative Services (ODR/AS) reviews each evaluation response. The coordinator of due process services checks any concerns against the case record and may call the party(ies) for clarification. The director or coordinator contacts the hearing officer to review issues of concern and as necessary, issues a written cautionary notice to the hearing officer regarding any identified concerns. Additionally, as necessary, the director or coordinator may meet with the hearing officer to review the application of the regulations.

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<sup>6</sup> 2003-2004 Annual Report for Special Education, Office of Dispute Resolution and Administrative Services.

	Reporting Periods		
	2004 – 2005 <sup>7</sup>	2003 – 2004 <sup>8</sup>	2002 – 2003
Number of evaluations sent	300	389	92
Number of responses	69	112	46

☐ **Trends:**

- Eighty-nine (89) fewer evaluations were sent during the current reporting period as compared with the 2003-04 reporting period.
- The responses indicated that the hearing officers remain strongly consistent in the areas of:
  - ✓ Scheduling agreeable dates, times, and locations;
  - ✓ Maintaining a fair and impartial atmosphere;
  - ✓ Being knowledgeable of the requirements of both federal and state laws and regulations; and
  - ✓ Making prompt contact with both the parent and the LEA.
- Areas showing significant improvement from the last reporting period are:
  - ✓ Informing the parties of the availability of mediation;
  - ✓ Issuing the decision in the required timelines; and
  - ✓ Helping ensure that witnesses needed for the hearing were present.
- Areas of concern are raised with the individual hearing officer and as necessary, notice is sent to the individual regarding any need for improvement. During this reporting period, ODR/AS staff met with 2 hearing officers to further review area(s) of concern and develop performance measures to assist the hearing officer in meeting VDOE's expectations.

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<sup>7</sup> The reported numbers are not related to the number of hearing requests for the reporting period. Rather, they relate to the decisions received by ODR/AS for the reporting period, which includes those cases carried over from the previous reporting period.

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### C. HEARING OFFICER PERFORMANCE - DECISION

ODR/AS' director and coordinator of due process services review each hearing officer's decision.<sup>9</sup> Additionally, the coordinator reviews and monitors all pre-hearing reports, orders, and correspondences. Either the director or coordinator contacts the hearing officers if errors are identified relative to:

- apparent bias to either party
- correct use of citations
- readability
- correct appeal information
- other errors, such as incorrect names or conflicting data

ODR/AS may not review the decision for errors of law that are reserved for appellate review. As necessary, the director or coordinator contacts the hearing officer with any concerns and, in certain instances, requires the hearing officer to issue an error correction or a statement of clarification. These procedures are consistent with VDOE's management responsibilities for the due process system. (8 VAC 20-80-76 Q.2)

#### ☐ Trends:

- Decisions and pre-hearing reports continue to be consistent in:
  - ✓ writing in a manner both the LEA and parents can understand;
  - ✓ advising both parties of the option of mediation;
  - ✓ clearly identifying what was being ordered as a result of the decision; and,
  - ✓ including references to statutes or regulations that support the conclusions reached by the hearing officer.
- Fewer hearing officers erred this reporting period relative to:
  - ✓ advising the parties of their appeal rights; or
  - ✓ documenting that extensions of timelines were in the best interests of the child.

In those instances of error, ODR/AS staff reviewed the necessary requirements with the hearing officer. In the cases involving inaccurate identification of appeal rights, the ODR/AS staff required that the hearing officer reissue the decision.

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<sup>9</sup> Redacted decisions are posted on the web: <http://www.doe.virginia.gov/VDOE/dueproc>



#### **D. HEARING OFFICER – TRAINING**

In addition to the training requirements of the Virginia Supreme Court, the VDOE is responsible for training hearing officers on the legal aspects of special education (laws, regulations, and case law updates) and management of special education hearings. For the 2004-05 school year, hearing officers attended a two-day training event, April 2005, which focused on:

- ✓ IDEA 2004 – new mandates
- ✓ case law update
- ✓ IDEA 2004 requirements for hearing officers
- ✓ understanding Developmental Delay – testing/diagnostic assessment issues; implications for the classroom; medical/legal/educational/parental issues

Since 2001, the trainings have included aspects of specific disabilities. These one-day sessions have focused on: understanding testing and assessment as applied to children with disabilities; the application of evaluations to eligibility and IEP team decisions; assessments for related services; parental issues; and methodologies. To date, specific disability focus areas include: autism, learning disabilities, ADHD/ADD, and for this year, Developmental Delay.

During this reporting period, each hearing officer completed a self-study program. The program required a minimum of 30 points of training activities, identified by VDOE, and which were to be completed by June 30, 2005. Each hearing officer's program was reviewed and approved by ODR/AS' director and included an evaluation component for each self-study activity.

VDOE established six competencies for special education hearing officers in 2001 relative to VDOE's increased training requirements.<sup>10</sup> The self-assessment and self-study components are part of Competency VI.

#### **E. MANAGING THE 45-DAY MANDATED TIMELINE**

Hearing officers are mandated to issue their decisions within 45 calendar days after the local school division receives the request for the hearing. The hearing officer may grant an extension only when it serves the best interest of the child. (8 VAC 20-80 76.K of the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*)

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<sup>10</sup>*Internal Operational Procedures for Implementing the Regulations Governing Special Education Programs for Children with Disabilities in Virginia, Relative to the Due Process Hearing System*, March 2001.

VDOE identified the 45-day timeline as one of its target areas in its Continuous Improvement Monitoring Process Reports to OSEP (2002 and 2003) and Annual Performance Report, 2004. VDOE developed and implemented a process that includes intensive monitoring and tracking of these timelines, training hearing officers on this subject, and issuance of notices to hearing officers who fail to document extensions. VDOE also assured Virginia's Code Commission that these efforts would address the concerns raised during the public hearings of the Administrative Law Advisory Committee. (VDOE Report to the Code Commission and ALAC, November 1, 2002)

	2004 – 2005	2003 – 2004	2002 - 2003
Total number of due process requests	107	127	100
Number of cases exceeding the 45-day timeline	31	46	46

☐ **Trends:**

- The data is evidencing a trend of cases not requiring extensions to complete the decision from 2001-2002:
  - ✓ 2001-02: 60 out of 120 hearing requests involved extensions.
  - ✓ 2002-03: 46 out of 100 hearing requests involved extensions.
  - ✓ 2003-04: 46 out of 127 hearing requests involved extensions.
  - ✓ 2004-05: 31 out of 107 hearing requests involved extensions.
- Number of days over the 45-day timeline

	Reporting Periods		
	2004 – 2005	2003 – 2004	2002 - 2003
<b>Total Cases</b>	<b>31</b>	<b>46</b>	<b>46</b>
1 – 30 days	17	23	19
31 – 90 days	11	17	20
91 – 120 days	2	4	4
121 +	1	2	3

- The data indicates that:
  - ✓ approximately one-third or 35% of the cases involve extensions.
  - ✓ the number decreased from 2003-2004.
  - ✓ the majority of decisions are being rendered within the first extension period.
- The hearing officers are doing significantly better in documenting extensions during this reporting period. The coordinator of due process services employs an electronic tracking log to monitor all timelines and extensions to ensure that the extensions comport with regulatory requirements. ODR/AS addresses with the individual hearing officer errors in meeting the regulatory requirements. As necessary, ODR/AS requires the hearing officer to reissue proper correspondence regarding extensions and may require the hearing officer to meet with ODR/AS staff to review the regulations and complete performance measures to ensure compliance with the requirements.

☐ **Party requesting the extension:**

	Reporting Periods		
	2004 – 2005	2003 – 2004	2002 - 2003
Parent	24	15	13
LEA	4	3	1
Both	12	18	27
Hearing Officer	1	9	5
Child	0	1	0

This data is consistent with the previous reporting period, except there is a decreased number this reporting period of hearing officers giving extensions, although neither party requested it. Virginia's special education regulations require that only the parties may request an extension. ODR/AS continues to follow up with the hearing officers where extensions are not properly granted. During this reporting period one complaint investigation found that a hearing officer had not documented certain extensions sufficiently and the hearing officer is no longer active. ODR/AS continues to encourage careful consideration of the timeline through a pre-hearing/hearing checklist for hearing officers to use once assigned to a case.

☐ The reasons for the extension are consistent with previous years:

- ✓ accommodate availability of experts;
- ✓ parents obtaining counsel;

- ✓ scheduling conflicts<sup>11</sup>; and
- ✓ inclement weather.

## F. IMPLEMENTATION PLANS

Following the completion of each due process hearing, whether or not it goes to full hearing or is settled or dismissed, the school division is required to file with ODR/AS an Implementation Plan that reports how the school division will implement the hearing officer's decision. The LEA has 45 calendar days to submit the implementation plan following the hearing officer's decision. The coordinator of due process services reviews and approves all implementation plans.

	Reporting Periods		
	2004 – 2005	2003 – 2004	2002 - 2003
Number of plans required	107	127	100
Received	92	92	68
Approved	87	81	54
Pending review	5	11 [0***]	14** [0***]
Pending receipt/review	15*	35** [0***]	32** [0***]
Total pending closure	20	46 [0***]	0**

\*As of 6/30/05 \*\*As of 6/30/04 \*\*\*As of 6/30/05 these items were no longer pending and are approved

## G. FOLLOW-UP SYSTEM FOR IMPLEMENTATION PLANS

VDOE identified as a target area in its Continuous Improvement Monitoring Process (CIMP) follow-up with school divisions to ensure implementation of the plans submitted by LEAs to comport with the hearing officers' decisions and approved by VDOE. This meant developing a system to review all implementation plans, to require documentation, and/or to initiate an on-site review. In VDOE's CIMP reports to OSEP in June and November 2003, and 2004 Annual Performance Report, ODR/AS documented its system for meeting this responsibility, which was implemented on July 1, 2003. ODR/AS began with the 2002-03 Implementation Plans.

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<sup>11</sup> Hearing officers have been reminded that Virginia's regulations governing special education do not permit extensions to be granted to accommodate the scheduling conflicts of counsel.

	Reporting Periods		
	2004 – 2005	2003 – 2004	2002 – 2003
Number of due process cases	107	127	100
Number of plans requested and received	92	92	68
Number of plans pending receipt	15	35 [0*]	32 [0*]
Follow-up Implementation Plans reviewed	87	96	100
✓ not requiring additional action	50	55	67
✓ requiring follow-up activity	37	41	33
✓ additional documentation received/approved	34	3	33
IPs pending review	5	31 [0*]	0

\*As of 6/30/05

## H. INITIATIVES

- ODR/AS is developing a guidance document for hearing officers on the subject of the 45-day timeline. This project was identified in VDOE's 2003 CIMP Report to OSEP; in VDOE's 2002 report to Virginia's Code Commission; and, in VDOE's 2004 Annual Performance Report.
  - The office's Work Plan includes the following components:
    - ✓ reviewing information from other SEAs regarding policies, procedures, and practices;<sup>12</sup>
    - ✓ reviewing three years of data to determine what patterns may exist relative to such areas as reasons for the extensions and hearing officers granting the extensions;
    - ✓ reviewing applicable case law on this subject; and developing the guidance document.

Anticipated completion date: December 2006

<sup>12</sup> The Mid-South Regional Resource Center was instrumental in obtaining this information from other SEAs for VDOE.

- ☐ The coordinator of due process services developed a checklist for hearing officers as a reminder of the regulatory responsibilities during the hearing process. It includes a provision on how to calculate the 45-day timeline.
- ☐ In VDOE's 2004 Annual Performance Report to OSEP, VDOE reported a project target and activity that focuses on the development of a guidance document, Alternative Dispute Resolution Guidance Document. This project was initiated during this reporting period. VDOE also developed this project in response to the concerns raised during the public hearing held by the Virginia Code Commission's Administrative Law Advisory Committee. The concerns related to the parents' need for understanding the legal intricacies of the process when representing themselves in due process hearings. Without this understanding, parents reported that they remained at a disadvantage when the school board attorney represents the LEA's interests, thus eliminating a level playing field. The document will also provide information and guidance on conflict resolution, such as mediation and the complaints system.

Anticipated completion date for distribution: December 2006

- ☐ In response to the above referenced public hearing, ODR/AS developed and posted on its web site, a list of legal and advocacy services for parents and students with disabilities, with a brief summary description of each of the services. <http://www.doe.virginia.gov/VDOE/dueproc>
- ☐ Based on the IDEA 2004 mandate for Resolution Sessions, ODR/AS will include in its tracking system a data base for resolution sessions held, disputes resolved through resolution agreements, due process requests withdrawn after resolution sessions, and disputes resolved after full adjudication.

## **PART II      MEDIATION SERVICES**

### **F   Baseline Data**

### **F   Evaluations**

- ✓ System
- ✓ Consumer
- ✓ Mediators

### **F   Training**

Mediation services are available to parents and school administrators to help them negotiate issues that divide them regarding the identification, testing or provision of services to school age students who are thought to need help in order to have access to or to benefit from the curriculum. The sooner mediation is sought, the more likely it is to be successful. It helps people to a successful outcome in 74-78% of the times when it is sought. Changing the format and the dynamics of a meeting is likely to change its outcome. Mediation is a good option to bear in mind when the settlement period is invoked by a request for hearing. There is material descriptive of the mediation process on our website at [http:// www.doe.virginia.gov/VDOE/dueproc](http://www.doe.virginia.gov/VDOE/dueproc) > mediation.

### **A. BASELINE DATA**

VDOE's Special Education Mediation Services joined the ODR/AS staff on July 1, 2003. This unit includes: 7 mediators; ODR/AS director, coordinator of mediation services, and administrative assistant. The current system for maintaining the baseline data was developed and implemented during the 2003-2004 reporting period.

☐ **Disposition of Requests**

	Reporting Periods		
	2004 – 2005	2003 – 2004	2002-2003
<b>Number of requests</b>	<b>133</b>	<b>135</b>	<b>98</b>
• resolved	79	90	71
• partially resolved	5	6	0
• unresolved	27	25	20
• withdrawn	21	14	6
• pending	1	0	1 [0*]

\*As of 6/30/04

☐ **Requests Involving Due Process**

	Reporting Periods		
	2004 – 2005	2003 – 2004	2002 - 2003
<b>Number of requests</b>	<b>133</b>	<b>135</b>	<b>98</b>
<b>Number involved in DP</b>	<b>29</b>	<b>41</b>	<b>36</b>
✓ resolved	17	25	25
✓ partially resolved	0	2	0
✓ unresolved	7	11	11
✓ withdrawn	5	3	0
✓ pending	0	0	0

☐ **Three-Year Review of Mediation Requests**

	2004-2005	2003-2004	2002-2003
Mediations requested	133	135	98



☐ **Issues**

	Reporting Periods		
	2004 – 2005	2003 – 2004	2002-2003
<b>Total number of issues</b>	<b>195</b>	<b>243</b>	<b>191</b>
IEP	<b>131</b>	<b>163</b>	110
✓ sufficiency of services	59	66	58
✓ type of services	38	40	39
✓ placement	30	46	8
✓ goals	4	11	5
Staffing	31	24	24
Evaluation & Disability	17	24	21
Financial responsibility*	11	16	20
Discipline	3	11	11
Transportation	1	5	5
FAPE	1	0	0

\* Involves disputes over financial responsibility for costs associated with a program that the parent has selected.

☐ **Requests by Region:**

Regions	2004 - 2005	2003 – 2004
<b>Region I</b>	20	12
<b>Region II</b>	16	24
<b>Region III</b>	17	12
<b>Region IV</b>	53	61
<b>Region V</b>	14	12
<b>Region VI</b>	7	8
<b>Region VII</b>	5	3
<b>Region VIII</b>	1	3

## **Trends**

- After a 38% rise in requests for mediation the previous year, the number of requests for mediation held fairly stable for this past year. The coordinator continues to speak to all available audiences of administrators and parents to encourage their understanding of the accessibility and value of the program.
- The number of mediation requests involving due process hearings decreased this reporting period despite training and outreach activities.
- Parties considering hearing would do well to consider mediation in order to provide a fresh format and some fresh thinking in their settlement discussions.
- There has been a huge increase in the number of cases in which autism is a pivotal consideration. There has been a corresponding decrease in the age at which student's services have come before a mediator for assistance in negotiation.
- Some mediators report that schools understand and make better use of mediation and come to the table better prepared to cooperatively participate in negotiations.

## **B. Evaluations**

### **Consumer Evaluations**

People who are parties to mediation are encouraged to complete a written evaluation to account for their experiences. We distributed 266 this year. The coordinator reviews them for issues he may address and calls for more information if necessary. People are encouraged at any time to call or write the coordinator with their experiences or approach him at a meeting.

Here are some sample comments from participants:

*Parent:* "Mrs. \* did a great job. She helped understand things, clarified and made sure we stayed focused. I appreciated her."

*Administrator:* "The mediation process allowed both parties to interact in a cooperative manner. The fact that the school division representatives were not central to the dispute lessened the parents' emotional responses."

*Parent:* "Mrs. \* was very professional during the entire process. I was very appreciative of her level of communication and contact to keep me informed about dates, time and instructions about the process."

*Administrator:* "This mediation session went very smoothly. \* takes time to listen to both sides and we were easily able to reach an agreement."

*Parent:* “This is the second time we go through mediation and SSEMS seem(sic) to find the common grounds for me and the school to agree on. Thanks to Mr. \* this time.”

*Administrator:* “\* was highly effective and professional and facilitated very efficiently in a highly charged discussion. Thanks!”

*Administrator:* “It was unfortunate that a successful decision could not be made in mediation, but the mediator did a good job to assist in the process.”

### **Evaluation of Mediators**

Our evaluations extend beyond these informal reports to observations and formal assessments in writing, which are discussed with the mediators. Our objective in assessing mediators is to constantly point out to them the growing edges of their practice, and to provide the possibility of continuing growth and improvement in their understanding and practice of assisting people in negotiating conflict.

## **C. TRAINING**

Mediators are convened for about 32 hours each year for exposure to issues emerging in the field, in their practices and in the law. This year included their participation with the hearing officers in a review of the IDEA 2004 mandates, and the disability area of Developmentally Delayed.

## PART III COMPLAINTS SYSTEM

- Baseline Data
- Implementation System for CAPS
- ODR/AS Initiatives

### A. BASELINE DATA

#### ☐ Number of Complaints

	Reporting Periods		
	2004 – 2005	2003 – 2004	2002 - 2003
<b>Number of Complaints</b>	<b>167</b>	<b>169</b>	<b>173</b>
• resolved through mediation or otherwise settlement agreement	18	23	30
• withdrawn	22	23	15
• dismissed	5	4	0
• findings/decisions issued	77	84	92
• pending as of 6/30/05	45	35*	36**
Number exceeding the 60-day timeline without the mandated extension	1	1	1

\*As of 6/30/04

\*\* As of 6/30/05

#### ☐ Five-Year Review of Complaints Received

Fiscal Year	2004-2005	2003-2004	2002-2003	2001-2002	2000-2001
Total Number of Complaints	167	169	173	193	196

☐ **Findings/Decisions**

	Reporting Periods		
	2004 – 2005	2003 – 2004	2002 - 2003
Number of decisions issued	77	84	92
Number of issues	209	227	175
Number of issues in compliance	150	120	97
Number of issues in noncompliance	59	107	78

☐ **Decisions Appealed**

	Reporting Periods		
	2004 – 2005	2003 – 2004	2002 - 2003
Number of decisions issued	77	84	92
• <b>appealed</b>	<b>26*</b>	<b>33</b>	<b>33</b>
• findings affirmed	21	21	25
• findings reversed	0	2	1
• findings remanded	2	1	1
• findings split	3	9	6
• affirmed issues	10	7	4
• reversed issues	2	4	4
• remanded issues	3	3	5
• dismissed issues	0	0	0

\*6 appeals were based on findings issued in 2003/2004.

☐ **Issues**

Issues/Sub-issues	Reporting Period		
	2004 – 2005		
	#Issues	C*	NC*
<b>IEP</b>	<b>75</b>		
Implementation	56	30	26
Consent	1	0	1
content development	7	5	2
Development, Review & Revision	11	8	3
<b>IEP Meetings</b>	<b>28</b>		
team composition	5	5	0
revisions without meeting	0	0	0
parental participation	10	8	2
Provision of parent copy	2	1	1
parent request for meeting denied	3	3	0
meeting procedures	0	0	0
progress reports	1	1	0
copy of IEP to necessary staff	2	1	1
Notice	5	3	2
Timelines	0	0	0
<b>FAPE</b>	<b>16</b>		
disability harassment	10	10	0
provision of FAPE	1	0	1
Loss of instruction	0	0	0
ESY	0	0	0
Transportation	2	2	0
Safety	2	2	0
Age appropriate	0	0	0
Extracurricular Activities	1	1	0
<b>Procedural Safeguards</b>	<b>22</b>		
IEE	8	7	1
informed consent	3	3	0
implementation of HO's order	0	0	0
parental participation	4	4	0
written prior notice	6	6	0
Proc. Safeguards doc.	1	1	0
<b>LRE</b>	<b>4</b>	3	1
<b>Discipline</b>	<b>9</b>		

Issues/Sub-issues	Reporting Period		
	2004 – 2005		
	#Issues	C*	NC*
disciplinary procedures	4	2	2
MDR	5	4	1
<b>Eligibility/Evaluation/ Reevaluation</b>	<b>21</b>		
eligibility procedures	7	6	1
timelines	3	1	2
evaluation procedures	7	6	1
Evaluation/re-evaluation procedures	4	3	1
<b>Child Find</b>	<b>4</b>		
procedures	4	3	1
<b>Program Standards</b>	<b>7</b>		
qualified personnel	6	5	1
Staff (caseloads)	1	1	0
<b>Records</b>	<b>8</b>		
access	4	3	1
management	0	0	0
confidentiality	2	1	1
amendment	1	1	0
consent to release	1	1	0
<b>Other</b>	<b>15</b>		
information provided in native language	0	0	0
local advisory committee composition	0	0	0
insurance funds	0	0	0
Complaint procedures	0	0	0
Due Process procedures	11	6	5
change in placement	1	1	0
Service Plan Development & Implementation	2	1	1
Policies & Procedures	1	1	0
<b>TOTALS</b>	<b>209</b>	<b>150</b>	<b>59</b>

\*denotes that the LEA was found to be in compliance “C” or non-compliance “NC”.

	Reporting Period 2004-2005			Reporting Period 2003-2004			Reporting Period 2002-2003		
Issue Category	Total Issues	C	NC	Total Issues	C	NC	Total Issues	C	NC
IEP	75	43	32	76	36	40	57	30	27
IEP Meetings	28	22	6	66	34	32	29	15	14
FAPE	16	15	1	16	13	3	12	9	3
Procedural Safeguards	22	21	1	19	9	10	23	14	9
LRE	4	3	1	5	5	0	3	1	2
Discipline	9	6	3	12	6	6	10	6	4
Eligibility/Evaluation/ Reevaluation	21	16	5	17	9	8	20	10	10
Child Find	4	3	1	2	2	0	3	1	2
Program Standards	7	6	1	0	0	0	3	2	1
Records	8	6	2	11	5	6	6	4	2
Other	15	9	6	3	1	2	9	4	5
<b>TOTALS</b>	<b>209</b>	<b>150</b>	<b>59</b>	<b>227</b>	<b>120</b>	<b>107</b>	<b>175</b>	<b>96</b>	<b>79</b>

#### ☐ Trends

- The number of complaints for this reporting period is approximately 12 less than the average of the total number of cases over the last 5 years. The number of complaints is 2 less than last year.
- The number of complaint issues decreased by 18 issues. The number of issues is significant, as the regulations require the SEA to address each issue with findings.
- The number of decisions that were appealed decreased since the last reporting period.
- The critical areas of non-compliances:
  - ✓ IEP implementation
  - ✓ Due Process procedures
  - ✓ Discipline



- Areas that showed slight improvement in compliance:
  - ✓ Written Prior Notice
  - ✓ IEP team composition
  - ✓ Parental Request for IEP meetings

## B. IMPLEMENTATION SYSTEM FOR CORRECTIVE ACTION PLANS

VDOE identified as one of its target areas in its Continuous Improvement Monitoring Process and Annual Performance Report to follow up with school divisions to ensure timely correction of non-compliances as required by complaint decisions. This meant developing a system to review all CAPs that had been approved by ODR/AS, and as necessary, require documentation and/or initiate an on-site review to ensure complete implementation. In VDOE's CIMP reports to OSEP in June and November 2003, and 2004 Annual Performance Report, ODR/AS evidenced its system for meeting this responsibility, which was developed and implemented on July 1, 2003. ODR/AS began with the 2001-02 school year CAPs.

Fiscal Year	Number of Decisions Issued	Pending Decision	CAPs Issued	Reviewed for Full Implementation and Closed	Pending Review
2004-05	77	45	35	0	35*
2003-04	113	0	52	53**	5***
2002-03	128	0	66	66	0
2001-02	108	0	98	98	0

\* As of 06/30/05

\*\* Number includes 6 cases that were reviewed when no CAP was issued; however, LEA's identified self-correction was verified.

\*\*\*anticipated completion date: 12/30/05

## C. INITIATIVES

- As noted in the previous due process and mediation sections of this report, ODR/AS is developing a guidance document on Alternative Dispute Resolution for parents and other consumers. One of the document's sections focuses on the complaints system.
- One of ODR/AS' complaints specialists was newly hired in September, 2004. Her orientation included: intensive review of the office's procedures for processing complaints and inquiries; and on-going trainings on special education law and regulatory matters. Each specialist is assigned to two regions and serves on VDOE's technical assistance team for those particular regions. The specialist

also attends regional meetings of the special education directors in the assigned region.

- ODR/AS staff, particularly the complaints staff, work closely with the VDOE parent ombudsman and parent resource specialist (both with the Office of Student Services) to provide information and guidance to the Parent Resource Centers and parents on dispute resolution matters. The ombudsman position began in 2003-04 in response to the Code Commission's 2001 recommendation to VDOE to create such a position to assist parents with special education matters and understanding of dispute resolution options.

## **PART IV ADMINISTRATIVE SERVICES**

- O Annual Plans
- O Inquiries
- O Freedom of Information Act Requests
- O Initiatives

The Office of Dispute Resolution and Administrative Services is also responsible for:

- coordinating the Annual Plan process for the local school divisions and state operated programs. The coordinator of administrative services oversees the annual plan system, as well as the coordination of the FAQs and matters related to the IDEA Reauthorization. The position began in November 2003.
- coordinating the process for developing and posting responses to the Frequently Asked Questions (FAQs) reflecting questions generated by the field. The coordinator of administrative services oversees this operation.
- responding to Freedom of Information Act (FOIA) requests relative to the dispute resolution systems. The coordinator of due process services coordinates the responses to FOIA requests.
- responding to written and electronic Inquiries involving the application of federal and state regulations governing special education. The ODR/AS staff is responsible for responding to inquiries.
- tracking the IDEA Reauthorization process; coordinating VDOE's revision of the regulations governing special education and training initiatives relative to changes in the statute and regulations. The coordinator of administrative services is responsible for this function.

### **□ Annual Plans**

Pursuant to the *Code of Virginia*, § 22.1-215, each of the 150 Virginia school divisions and state operated programs shall submit a plan to VDOE for approval, to provide special education services to identified children with disabilities residing within its jurisdiction. This plan shall not be submitted more than annually unless changes to the plan are required by federal or state law or regulation. This plan must be received by VDOE, in substantially approvable form, no later than July 1 of each year.

## ☐ **Frequently Asked Questions**

The revamping of the Annual Plan system resulted in a reprioritizing of this activity. ODR/AS' goal is to redesign this project to provide more timely posting of FAQs on the division's website in light of the new IDEA mandates.

## ☐ **The IDEA 2004**

ODR/AS was responsible for coordinating statewide training on the IDEA 2004 mandates. Trainings were successfully completed for all regions; the State Special Education Advisory Committee; the Special Education Directors' Council; VDOE's hearing officers and mediators; Parent Resource Centers; and special interest groups. ODR/AS developed a number of guidance documents to accompany the trainings. The Office of Special Education Services developed a number of technical assistance documents to further assist parents, school administrators, and other consumers understand the new IDEA mandates. These training efforts are continuing during the 2005-06 school year. The guidance and technical assistance documents are available on the office's website at: <http://www.doe.virginia.gov/VDOE/dueproc>

## ☐ **Inquiries**

Fiscal Year	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005
Number of Requests	67	136	119	158	146	158

Inquiries are requests for interpretation or application of regulations that are not related to a specific complaint, mediation, or due process case.

## ☐ **Freedom of Information Act Requests**

This is a new data-reporting item for ODR/AS.

Fiscal Year	2003-2004	2004-2005
Number of Requests	34	28

APPENDIX

Dispute Resolution Activities by Local Educational Agency  
2003 - 2004

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cc: VDOE's management team responsible for the State Performance Plan  
VDOE staff in the Division of Special Education and Student Services  
VDOE Office of Federal Program Monitoring  
VDOE hearing officers and mediators  
Virginia Supreme Court, Office of the Executive Coordinator  
State Special Education Advisory Committee  
Code Commission, ALAC  
Directors of Special Education

**APPENDIX A**  
**Dispute Resolution Activities by LEA**  
**2004-2005**

<b>SCHOOL DIVISION</b>	<b>SPED PUPILS AGES 0-22+</b>	<b>TOTAL PUPILS</b>	<b>Due Process Hearings Filed</b>	<b>SPED Complaints Filed</b>	<b>Mediation Cases</b>
Accomack	702	5,385	0	2	0
Albemarle	1,973	12,420	2	4	1
Alexandria City	1,979	10,996	2	5	2
Alleghany	498	2,933	0	0	1
Amelia	295	1,761	0	1	0
Amherst	598	4,738	0	0	0
Appomattox	334	2,321	0	0	0
Arlington	3,113	18,802	4	4	6
Augusta	1,632	10,871	0	2	0
Bath	114	783	0	0	0
Bedford	1,266	11,031	0	1	0
Bland	135	895	0	0	0
Botetourt	769	4,831	0	0	0
Bristol City	432	2,319	0	0	0
Brunswick	323	2,322	0	0	0
Buchanan	780	3,570	0	1	0
Buckingham	308	2,244	0	0	0
Buena Vista City	169	1,129	0	0	0
Campbell	1,070	8,906	2	2	0
Caroline	532	3,928	0	4	3
Carroll	697	4,061	0	0	0
Charles City County	141	857	0	0	0
Charlotte	351	2,272	0	0	0
Charlottesville City	791	4,388	0	0	0
Chesapeake City	7,123	40,265	1	2	2
Chesterfield	8,386	56,242	2	7	2
Clarke	205	2,163	0	1	0
Colonial Beach	71	589	0	0	0
Colonial Heights City	433	2,891	1	0	0
Covington City	205	841	0	0	0
Craig	120	689	0	0	0

<b>SCHOOL DIVISION</b>	<b>SPED PUPILS AGES 0-22+</b>	<b>TOTAL PUPILS</b>	<b>Due Process Hearings Filed</b>	<b>SPED Complaints Filed</b>	<b>Mediation Cases</b>
Culpeper	731	6,489	1	1	0
Cumberland	218	1,479	0	2	0
Danville City	1,029	7,312	0	0	1
Dickenson	447	2,538	0	0	0
Dinwiddie	660	4,530	0	1	1
Essex	297	1,614	0	0	0
Fairfax	23,649	164,767	18	14	16
Falls Church City	266	1,898	0	0	0
Fauquier	1,436	10,742	0	0	0
Floyd	378	2,095	0	1	0
Fluvanna	524	3,395	0	0	1
Franklin	1,392	7,347	0	0	0
Franklin City	265	1,383	0	0	0
Frederick	1,392	11,745	1	1	2
Fredericksburg City	365	2,473	1	0	0
Galax City	140	1,302	0	0	0
Giles	354	2,539	0	1	0
Gloucester	773	6,149	0	0	0
Goochland	396	2,220	0	0	0
Grayson	311	2,211	1	0	2
Greene	519	2,717	0	0	1
Greensville	395	2,647	0	0	0
Halifax	1,183	5,936	0	1	0
Hampton City	3,304	22,938	0	3	0
Hanover	2,925	18,530	3	10	5
Harrisonburg City	641	4,150	0	0	0
Henrico	6,941	45,711	8	4	6
Henry	1,495	7,815	0	1	0
Highland	61	298	0	0	1
Hopewell City	729	3,908	0	0	0
Isle of Wight	704	5,167	0	2	0
King & Queen	199	828	0	0	0
King George	433	3,354	0	0	1
King William	348	1,910	0	0	0

<b>SCHOOL DIVISION</b>	<b>SPED PUPILS AGES 0-22+</b>	<b>TOTAL PUPILS</b>	<b>Due Process Hearings Filed</b>	<b>SPED Complaints Filed</b>	<b>Mediation Cases</b>
Lancaster	198	1,476	0	0	0
Lee	726	3,680	1	0	0
Lexington City	87	473	0	0	0
Loudoun	4,621	43,991	5	4	20
Louisa	650	4,408	1	0	1
Lunenburg	308	1,774	0	0	0
Lynchburg City	1,454	8,620	1	0	2
Madison	214	1,844	0	0	0
Manassas City	802	6,761	0	1	1
Manassas Park City	260	2,374	0	0	0
Martinsville City	370	2,636	0	0	0
Mathews	231	1,263	0	0	0
Mecklenburg	865	4,931	0	2	1
Middlesex	225	1,308	0	0	0
Montgomery	1,305	9,517	0	2	1
Nelson	370	2,026	0	0	0
New Kent	492	2,626	0	0	0
Newport News City	4,339	33,122	1	1	1
Norfolk City	5,111	36,285	4	4	0
Northampton	309	1,999	0	0	0
Northumberland	205	1,477	0	0	0
Norton City	108	736	0	0	0
Nottoway	426	2,450	0	0	0
Orange	578	4,299	0	0	0
Page	410	3,626	0	0	0
Patrick	442	2,582	0	0	0
Petersburg City	730	5,128	2	4	2
Pittsylvania	1,325	9,300	1	1	3
Poquoson City	287	2,596	0	0	0
Portsmouth City	2,391	15,843	4	4	2
Powhatan	647	4,209	2	1	2
Prince Edward	559	2,788	0	1	0
Prince George	751	6,236	1	2	1
Prince William	7,903	66,300	5	16	6



<b>SCHOOL DIVISION</b>	<b>SPED PUPILS AGES 0-22+</b>	<b>TOTAL PUPILS</b>	<b>Due Process Hearings Filed</b>	<b>SPED Complaints Filed</b>	<b>Mediation Cases</b>
Pulaski	853	4,939	0	2	1
Radford City	256	1,539	0	0	0
Rappahannock	172	1,012	0	0	0
Richmond County	182	1,202	0	2	1
Richmond City	4,829	25,054	1	5	0
Roanoke	2,329	2,329	0	0	0
Roanoke City	2,182	13,655	0	1	0
Rockbridge	389	2,928	1	0	0
Rockingham	1,362	11,249	0	1	7
Russell	755	4,260	0	0	0
Salem City	485	3,944	0	0	1
Scott	686	3,648	0	2	0
Shenandoah	858	5,954	0	0	0
Smyth	933	5,129	0	0	0
Southampton	484	2,805	0	0	0
Spotsylvania	3,298	22,948	2	5	5
Stafford	2,652	25,635	2	5	6
Staunton City	459	2,662	0	2	0
Suffolk City	1,520	13,722	0	4	0
Surry	179	1,123	0	0	0
Sussex	199	1,348	0	0	0
Tazewell	1,089	6,876	2	0	0
Virginia Beach City	10,529	75,515	10	10	7
Warren	811	5,174	0	0	0
Washington	1,044	7,412	0	1	0
Waynesboro City	328	3,087	0	0	1
West Point	96	788	0	0	0
Westmoreland	258	1,916	0	0	1
Williamsburg-James City	1,325	9,402	2	2	2
Winchester City	710	3,678	1	0	0
Wise	985	6,894	3	1	1
Wythe	540	4,274	3	1	1
York	1,197	12,374	1	1	2

<b>SCHOOL DIVISION</b>	<b>SPED PUPILS AGES 0-22+</b>	<b>TOTAL PUPILS</b>	<b>Due Process Hearings Filed</b>	<b>SPED Complaints Filed</b>	<b>Mediation Cases</b>
Dept. of Education	0	0	4	0	0
Other H.O.*	0	0	0	1*	0

\*This involved a complaint regarding a hearing officer's management of a due process hearing.